

**MINUTES
of the
FOURTH MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**September 19 - 21, 2007
Gadii Ahi (Cudeii) Chapter, New Mexico
T'iistoh (Burnham) Chapter, New Mexico
San Juan Chapter, New Mexico**

The fourth meeting of the Indian Affairs Committee for the 2007 interim was called to order by Representative Ray Begaye at 10:24 a.m. in the chapter house of the Gadii Ahi (Cudeii) Chapter of the Navajo Nation.

Present

Rep. James Roger Madalena, Co-Chair
Sen. Rod Adair
Rep. Ray Begaye
Sen. Lynda M. Lovejoy (9/20 & 9/21)
Rep. Patricia A. Lundstrom
Rep. John Pena
Sen. Lidio G. Rainaldi (9/20)
Rep. Gloria C. Vaughn

Advisory Members

Rep. Nick L. Salazar

Absent

Sen. John Pinto, Co-Chair
Sen. Dianna J. Duran
Rep. Justine Fox-Young
Rep. Manuel G. Herrera
Sen. Nancy Rodriguez
Sen. John C. Ryan
Rep. W. C. "Dub" Williams

Sen. Ben D. Altamirano
Sen. Joseph J. Carraro
Rep. Ben Lujan
Sen. Richard C. Martinez
Rep. Debbie A. Rodella
Sen. William E. Sharer
Sen. David Ulibarri

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Chase Van Gorder
Jennie Lusk
Larry Matlock

Guests

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Wednesday, September 19 — Gadii Ahi (Cudeii) Chapter, Navajo Nation

Gadii Ahi (Cudeii) Chapter, Navajo Nation — Status Update

Chapter President Harry Descheenie welcomed the committee to the chapter. The chapter was formed in 1978 when it broke away from another chapter located 20 miles to the west. There are two communities, one of which is primarily farming, and the other is involved with oil, gas and helium production. The chapter has moved from a costly, work-intensive, open-canal irrigation system to a more modern system. The first two phases have been completed, and the chapter will be seeking \$200,000 in capital outlay appropriations to complete Phase 3. There is only a single road providing access to the chapter, which can be a problem. Although the chapter receives some tax revenue from Shiprock, the chapter is small and will receive more financial help once the Shiprock Chapter becomes certified. The chapter has already undertaken improvements to its irrigation system and is working toward partnering with First World to establish a remote satellite system to provide wireless telephone and internet service to chapter residents. The chapter is pursuing the construction of a correctional facility to be located on a 640-acre parcel already identified through the Bureau of Indian Affairs (BIA). The chapter is currently completing the environmental assessment necessary for a land withdrawal. President Descheenie described his own involvement in the corrections industry and the benefits a new facility would bring to the chapter, to Shiprock and to the Navajo Nation. It is anticipated that there will be a corrections academy located in Shiprock in conjunction with Diné College for training purposes.

Following a discussion of land reclamation and waterways, Representative Lundstrom moved, and Representative Vaughn seconded, that the committee write a letter to responsible parties encouraging them to support financially efforts to eradicate noxious, invasive, nonnative plant species. Committee members in attendance, voting as a subcommittee, unanimously supported the motion. President Descheenie also indicated that the chapter needs a new multipurpose building for the use of the chapter's seniors and youth because the chapter house is not located in the center of the community. There ensued extensive discussion among chapter representatives and committee members regarding problems in obtaining timely permission and funding from the Navajo Nation for capital projects supported by the state.

Tohatchi Veterans Organization

Representatives of the Tohatchi Veterans Organization, including Commander Charles Arviso, past Commander Tom Tony and others, presented a proposal to build a new community center in Tohatchi. The request is for \$1.6 million for a community center to meet the needs of the 600+ veterans in District 14 and the community needs of the residents of Tohatchi. The proposal has been supported by resolution of the Tohatchi Chapter of the Navajo Nation and the District 14 Council of the Navajo Nation. The Tohatchi Chapter has also approved the withdrawal of land as a site for the proposed community center. Questions and comments from the committee focused on issues related to getting capital outlay appropriations to chapters of the Navajo Nation approved by the Navajo Nation and implemented in a timely fashion prior to reversion of the funds.

Behavioral Health Collaboratives

Regina Roanhorse, a volunteer and consumer advocate, and Dr. Caroline Morris, a psychologist with the Navajo Nation Department of Health Behavioral Health Services, presented to the committee behavioral health issues in the Native American community. Ms. Roanhorse explained the organization of the behavioral health collaboratives, their funding sources and relationship to the Navajo Nation. She, along with Mike Salabiye (also with the Navajo Nation Department of Health Behavioral Health Services), presented appropriation requests for the 2008 legislative session, including a \$2 million capital outlay request that would complete funding for the Navajo Nation regional adult residential treatment center to be located in Shiprock. Questions and discussion from committee members included a discussion of past funding efforts, coordination with the state Department of Health budget requests and the availability of additional funds through the Tribal Infrastructure Project Fund. Representative Lundstrom moved, and Representative Madalena seconded, that the committee write a letter to Robert Apodaca requesting that the funds appropriated in Senate Bill 827 during the 2007 legislative session for the regional adult residential treatment center to be located in Shiprock not be commingled with other funds and that he move as quickly as possible to get out a request for proposals (RFP) for that project. Committee members in attendance, voting as a subcommittee, unanimously supported the motion.

Navajo Nation Veterans' Income Tax Refunds

Raymond Jim, president of the Shiprock Agency Navajo Veterans' Organization, requested that the committee support legislation that would extend the state statute of limitations relating to the filing of requests for state income tax refunds. This would permit Native American veterans to seek the refund of money that was improperly withheld from their military pay for the payment of state income taxes. Representative Lundstrom moved, and Representative Madalena seconded, that the committee support the reintroduction of Senate Bill 1230 from the 2007 legislative session with a revision that it apply to all veterans. Committee members in attendance, voting as a subcommittee, unanimously supported the motion. Mr. Jim also presented an appropriation request in the amount of \$50,000 for the planning and design of a Native American veterans' memorial in the Shiprock Agency.

State Medical Investigator — Navajo Nation Services

Etta Arviso of the Huerfano Chapter of the Navajo Nation asked the committee to consider resolutions adopted by the Huerfano and Nageezi chapters of the Navajo Nation requesting that the Navajo Nation Council appropriate funds to pay the state Office of the Medical Investigator (OMI) for past services rendered so that autopsy and other related death investigation services can once again be provided by the state to the Navajo Nation. Tim Stepetic and Scott Wilson, associate directors of the OMI, addressed the committee regarding the background of services rendered by the OMI to tribal entities, including the Navajo Nation. Mr. Stepetic stated that the OMI charges for autopsies and death investigations on tribal lands because the OMI has no jurisdiction over those investigations and participates by invitation only. Both the Federal Bureau of Investigation (FBI) and the BIA pays the OMI for investigations related to homicides. While all tribal entities pay for such services, it is a bigger problem for the Navajo Nation due to the number of service requests each year. Mr. Stepetic and Mr. Wilson

reviewed the history of services provided by the OMI to the Navajo Nation and payments by the Navajo Nation, as well as the history of proposed legislation during the 2007 legislative session. The current debt to the OMI owed by the Navajo Nation is \$254,207. A moratorium on services provided by the OMI to the Navajo Nation was imposed in April 2006 due to the unpaid debt. Stephanie Kiger, general counsel for the Indian Affairs Department, also commented on the 2007 legislation. Representative Lundstrom moved, and Representative Madalena seconded, that the committee write a letter to the appropriate officials of the Navajo Nation, urging them to resolve the outstanding debt to the OMI so that death investigation services can once again be provided to the Navajo Nation by the OMI. Committee members in attendance, voting as a subcommittee, unanimously supported the motion.

Tribal Extension Services

Paul Gutierrez, vice provost for outreach services and associate dean, Cooperative Extension Service, New Mexico State University (NMSU), Alton Henderson, Navajo Nation Department of Agriculture, Anthony Howard, Navajo Technical College extension agent, and Benita Litson, Diné College Land Grant Office, addressed the committee regarding tribal extension services. The mission of the New Mexico tribal extension initiative is to develop and deliver community-based education programs that will revitalize indigenous agriculture, implement culturally appropriate youth leadership projects and strengthen the bonds among individuals, families and communities. The overall goal of the initiative is to serve all 22 tribal entities through the planning of eight tribal extension centers. During the 2007 legislative session, \$247,000 was appropriated for the initiative. With financial, matching and in-kind grants from the state, NMSU and the Navajo Nation, a Northern Navajo Extension Center has been established in Shiprock and an Eastern Navajo Extension Center has been established in Crownpoint. The NMSU Board of Regents has established as a priority for the 2008 legislative session a \$500,000 appropriation to establish two or three additional tribal extension centers.

Following the discussion of tribal extension services, Representative Lundstrom suggested three items for committee action: 1) schedule a presentation by the Department of Transportation (DOT) at the committee's November meeting to discuss the recommendations of the House Memorial 35 Task Force on Transportation Funding and draft legislation setting aside a portion of the revenues from the new gaming compact for tribal transportation projects; 2) schedule a discussion of subprime mortgage lending for the committee's November meeting; and 3) draft a \$500,000 appropriation for the tribal extension initiative to be carried by Representative Begaye.

Representative Begaye recessed the meeting at 4:12 p.m.

Thursday, September 20 — T'iistoh (Burnham) Chapter, Navajo Nation

The fourth meeting of the Indian Affairs Committee for the 2007 interim was called back into session by Representative Begaye on Thursday, September 20, 2007, at 9:45 a.m. at the chapter house of the T'iistoh (Burnham) Chapter of the Navajo Nation.

T'iistoh (Burnham) Chapter, Navajo Nation — Status Update

Albert Davis, president, and Art Yazzie, vice president, of the chapter acquainted the committee with the history of T'iistoh Sikaad ("Big Tree Planted"), whose name was changed last year from that given by missionaries in 1923. The 360-square-mile chapter has 440 voters, of which 200 live within the chapter. The chapter is the home of a world champion cowboy, Nelson Tsosie. The chapter discussed the chapter's finances and listed its priorities as including a veterans' memorial and housing project, a bridge across Hunter Wash, a power line extension to the 12 remaining homes in the areas with no electricity, a western waterline extension from Huerfano to T'iistoh Sikaad and a senior citizen building. The chapter currently serves 36 seniors, but expects it could register as many as 160 if and when it has capacity. The chapter expects to be audited by the Navajo Nation in the first quarter of fiscal year 2008 for certification, pursuant to the Navajo Local Governance Act, after a visit in the final quarter of this calendar year. The chapter hopes to be connected to Highway 391 via Navajo Highway 5 by this time next year. Representative Lundstrom expressed support for a joint memorial in the upcoming legislative session requesting the Indian Affairs Department, the State Personnel Office and the state auditor to help the chapters with their certification process, because chapters often are left without expertise in pursuit of Navajo Nation certification. George Arthur, Navajo Nation Council delegate, addressed the committee on the issues of the chapter's natural resources, chapter certification, the proposed Desert Rock power plant and the planned Gallup-Navajo water supply pipeline project.

The discussion turned to the status of proposed improvements to U.S. Highway 491 and the disposition of State of New Mexico funds for the project. Last month, the Indian Affairs Committee voted to redirect state funds for the project if final approval on all aspects of the projects is not reached by the state and the Navajo Nation. At the present time, the Navajo Nation and the state have two remaining pending issues — taxation and the percentage of funds or materials to be contributed to the project by the nation. Representative Lundstrom explained that the New Mexico side of the project has had 38% inflation, and legislators are concerned that funds will be inadequate to complete the project. Mr. Arthur offered to help state legislators through the quagmire of the Navajo Nation bureaucracy, if needed. Representative Begaye moved and Senator Lovejoy seconded, a motion requiring committee leadership to meet with DOT Secretary Rhonda Faught to get perspective on the state's remaining issues on problems with finalizing negotiations between the state and the Navajo Nation. The motion carried unanimously.

Minutes

Upon a motion by Senator Rainaldi, seconded by Senator Lovejoy, the committee approved without objection the minutes from the July and August 2007 meetings of the Indian Affairs Committee.

Ratification of Subcommittee Actions on September 19, 2007

With a quorum of voting members present, the committee voted to ratify actions taken the previous day as a subcommittee regarding a letter concerning nonnative plants, the funding of the proposed regional adult residential treatment center to be located in Shiprock, reintroduction of Senate Bill 1230 from the 2007 legislative session and a letter to the Navajo Nation regarding the debt allegedly owed to the OMI. At the committee's request, Mr. Van Gorder said he would send a list of bills to be drafted to the committee and attempt to get topics on the November agenda, including subprime lending. Representative Begaye said he would reintroduce a bill instructing that tribal project funds that revert be directed to the Tribal Infrastructure Fund.

State/Tribal Park Consultation and Partnership Program

Dave Simon, director of New Mexico state parks, introduced Martin Begaye, assistant director of the Navajo Nation Parks and Recreation Department, and Herb Yahze, Monument Valley park manager and State Park Advisory Board member. The panelists discussed a new policy and a memorandum of understanding between the state and the Navajo Nation. The new policy specifically requires tribal access to tribal sites and has helped Jicarilla Apaches get access to their sacred sites near Clayton, New Mexico. The consultation program was adopted prior to the governor's executive order requiring such consultations from all executive departments. Mr. Begaye described the memorandum of understanding between the Navajo Nation and the state parks as the first in the nation. The document provides a framework for government-to-government financial agreements to support maintenance and upgrades of state parks. Committee members asked about the status of Red Rock State Park and were told that the state will assume management and ownership effective December 1. The park will need capital infrastructure improvements for upgrades required by the Americans with Disabilities Act and other needs. Asked about the reservations policy for state parks, Mr. Simon said that reservations are taken up to six months in advance, but that only three-fourths of state parks are reserved on a first-come, first-served basis. Asked about Navajo Lake State Park, Mr. Simon responded that \$1.5 million has been spent on revamping the sites over the past three years, including repair of water systems and electrical service.

Desert Rock Power Plant — Status Update

Nathan Plagens, vice president of Desert Rock Energy Company, LLC, and Steven Begaye, general manager for the Diné Power Company, updated the committee on the status of the proposed Desert Rock power plant. The plant is planned as a 1,500-megawatt coal-fired electric power plant that will utilize coal from the adjacent BHP coal mine. Construction cost are estimated at \$2.8 billion beginning in 2008, with completion in 2012, and an expected peak construction employment of 2,850. The presenters reviewed the status of the various permits and agreements that would be needed prior to construction. Reviewing the tax benefits of the

proposed plant, the State of New Mexico should receive \$600 million during the first 25 years of construction and operation. San Juan County should receive \$90 million in gross receipts taxes during that same period. Agreements have been reached with local governmental entities for payments in lieu of taxes in the amount of approximately \$167.3 million through the first 27 years of operation. An agreement has also been reached to provide benefits in excess of \$2.5 million to the Nenahnezad Chapter over the first 25 years. The proponents are still deciding whether to approach the state legislature again in 2008 for compensating tax relief. The presenters reviewed the environmental attributes of the plants, comparing anticipated emissions to those of other types of power plants. Plans for the plant include marketing and reusing carbon dioxide and reducing emissions more than any other plant. A final federal air permit is expected to be issued in September 2007, and a final environmental impact statement is to be issued in early 2008.

Elouise Brown from the Doodah Desert Rock Committee told the committee the Desert Rock site is being watched by environmentalists across the world. She complained that Sithe Global was to drill for water to test at the Desert Rock site for only 45 days, but instead has been there for 200 days. She questioned when the agreements for the water permit would be released because the information has not been made public. She asked the committee to require Desert Rock to find out how many of the required permits have been received, how many comments have been received during the public hearings and whether the company is Navajo-owned. She said 66% of all emitted sulfur dioxide nationwide originates with coal-fired plants and that 130 million tons of pollutants are already created by coal plants. She expressed concern over mercury pollutants as well as long-term climate shifts and severe water shortages and noted that figures on income to be produced by the plant should be reduced by the cost of health and environmental effects it is likely to cause. The Doodah group has held hearings in 10 areas, she said, and most attendees have spoken against the plant. Only one speaker — Steven Begaye — appeared in Santa Fe to support the project. The group has asked the Navajo Nation for a referendum on Desert Rock. Other representatives of Doodah Desert Rock Committee raised additional concerns with the proposed power plant. Representative Begaye said that Sithe Global and the Diné Power Authority could respond in writing to the concerns raised by the Doodah Desert Rock Committee.

Senator Lovejoy asked owners whether they intend that a bill granting a tax credit for the site to New Mexico taxpayers be introduced during the coming legislative session and was told that they may do so. She asked that they prepare thoroughly and address concerns that have been raised. Because the plant is a Navajo Nation project, New Mexico legislators may not have the ability to determine its future, though they can decide whether or not to support the plant through a tax break.

Following the panel discussion on the status of the proposed Desert Rock power plant, members of the committee were given a tour of the site of the proposed plant. Following the tour, Representative Begaye recessed the meeting at 4:30 p.m.

Friday, September 21 — San Juan Chapter, Navajo Nation

The fourth meeting of the Indian Affairs Committee for the 2007 interim was called back into session by Senator Lovejoy on Friday, September 21, 2007, at 9:30 a.m. at the chapter house of the San Juan Chapter.

San Juan Chapter, Navajo Nation — Status Update

President Wilbur C. Begay presented an extensive history of the San Juan Chapter, a copy of which is in the meeting archive. The chapter was created by the Navajo Nation in 1982. The Treaty of 1868 set land aside in the Four Corners area, which is now part of the Navajo Nation. District 13 was not included in the Treaty of 1868. By executive order, dated January 6, 1880, and April 24, 1886 District 13 was added to the original Navajo reservation. The Navajo name for San Juan Chapter is Tse'Tsi'Naah Nii Tlini', meaning "stone laid across the river" or "stone bridge". In the early days, people traveled across the San Juan River on horseback to purchase goods at the Hogback Trading Post. In 1933, the Fruitland Irrigation Project was started by the BIA, which was formed to bring the needed water so Navajos would begin to farm. This development led to the establishment of a day school by the BIA in 1934. In 1950, the school was converted to a boarding school and was named Nenahnezad Boarding School. The boarding school still exists today, but a majority of the students attend schools in the Central Consolidated School District. On March 7, 2007, the San Juan Chapter fell under the Local Governance Act certified by the Transportation and Community Development Committee of the Navajo Nation Council. The San Juan Chapter has a population of approximately 1,089, and 363 are registered voters with the chapter. The rest of the population is registered with other chapters. On an average annual basis, the growth rate in the community is 0.5%. The main road through the community is a gravel road. There are no paved roads within the chapter, except for Navajo Route 36, which runs east and west and connects Shiprock and Farmington.

President Begay introduced Vice President Robert C. Begay, the first Begay to serve in the New Mexico Legislature. It was noted that "Begay" is a common name derived by missionary mistranslation of the Navajo word for a maternal son. Ongoing capital outlay projects include a new multipurpose facility that is 95% complete, Phase 3 of power line extensions and farm roads. Priorities for new capital outlay projects include \$9,150,000 for a new Hogback Bridge, \$655,000 for emergency response infrastructure, including police and ambulances, \$5,125,000 for improvements to 14.4 miles of dirt roads used for school bus transportation and \$320,000 for a backhoe to maintain the roads. While the chapter is concerned about raising its own revenue and developing a healthier economic base, its isolation inhibits its ability to do so. The chapter needs to complete a joint powers agreement so that it can receive funds directly from the state.

Certification of Navajo Nation Chapters — Status Update

Sampson Begay, chair of the Transportation and Community Development Committee (TCDC) of the Navajo Nation Council; TCDC members Jerry Bodie, Johnny Naize, Willie Begaye and David Rico; Herbert Clah, director of the Shiprock Local Government Support Center (LGSC); and Alfreda Lee of the Navajo Nation Office of the Auditor General (OAG), addressed the committee regarding the benefits of chapter certification and the services to chapters under the Local Government Act of the Navajo Nation. The certification process is

designed to ensure that the chapters fully understand the management practices necessary for operating a healthy chapter. Ms. Lee presented a series of flow charts illustrating the certification process and explained the reason for the certification requirements. Arbin Mitchell, division director of the Division of Community Development for the Navajo Nation, reviewed the status of chapter certification. Four chapters in New Mexico have already been certified and numerous others are well into the process. Six chapters have already undergone field audits by the OAG. He stated that 96 chapters have submitted their certification documents under the Local Government Act for the nation, half of which have submitted all documents and the other half of which need to make minor corrections. Much progress has been made over the past three years, he said. Senator Lovejoy asked about support for chapters that want to become certified, the version of accounting software being installed at chapters, planning for budgets when severance tax funds are short and continuity of chapter leadership. Mr. Clah reviewed services rendered to chapters by the LGSC, noting that the chapter certification process is new territory for the Navajo Nation and that the Local Government Act already needs to be amended. He stressed how far ahead the chapters are in management abilities from where they were five years ago. Mr. Mitchell said that certification comes with the chapter's ability to issue permits, acquire property, make agreements for goods and services with other chapters, make intergovernmental agreements and contracts, appropriate funds, reallocate funds, establish a peacemaking court and generate revenue. Committee members questioned the presenters concerning what certification actually means for chapters and how it might affect implementation of capital outlay appropriations from the New Mexico Legislature.

Public Regulation Commissioners

Ben Ray Lujan, chair of the Public Regulation Commission (PRC), PRC member Carol Sloane, PRC Native American liaison Teresa Aguilar and PRC consumer relation staffer Joan Rios introduced their work and themselves to the committee and to assembled chapter members. Mr. Lujan gave regards to Senator Lovejoy, a former member of the PRC. Mr. Lujan explained a bit about the work of the PRC and said that the PRC can help with denial of insurance claims, as well as with other insurance and telecommunications problems.

Navajo Nation Capital Outlay Appropriations — Status Update

Teresa Gomez, deputy secretary of Indian affairs, and Rebecca Martinez, capital outlays manager for the Indian Affairs Department (IAD), updated the committee on the status of capital outlay appropriations to the Navajo Nation and its chapters. Ms. Martinez explained the efforts the IAD is making to work with the Navajo Nation to implement successfully capital outlay appropriations. These efforts include daily telephone contact with the Navajo Nation Capital Improvement Office (CIO), face-to-face meetings with the CIO at least quarterly, training sessions with chapter officials and project monitoring in the field. The IAD is stressing community planning as a part of its technical assistance efforts. The IAD is working with the Navajo Nation on 17 pilot projects to test and improve the nation's administrative review process. Ms. Martinez also reviewed the history of reversions of capital outlay appropriations for projects involving the Navajo Nation and its chapters. Committee members reviewed problems they have experienced in getting capital outlay appropriations spent or encumbered in a timely fashion. For the benefit of the Navajo Nation Council delegates in attendance at the meeting, Representative Lundstrom presented a detailed review of the financial problems facing transportation in New Mexico in general and GRIP I projects in particular. She explained the

concern of committee members regarding delays in implementing the Highway 491 project and why it may be necessary to allocate those funds to other projects in northwestern New Mexico so that the benefits of the GRIP I program are not entirely lost to the Navajo Nation.

Representative Salazar moved that there be a \$500,000 cap on any single capital outlay appropriation. Senator Lovejoy seconded the motion, and it passed without objection.

Mr. Mitchell and Scott House, who is with the CIO, explained what the Navajo Nation has been doing to help streamline the approval process so that state capital outlay appropriations can be expended in a timely manner. Mr. Mitchell presented a detailed explanation of the status of many pending projects. His division will make planning a priority in the coming fiscal year. It is working to help chapters deal with delinquent scopes of work. Mr. House said efforts to streamline the approval process include technical planning support, technical project management training for chapter officials and training on Navajo Nation procurement laws. Sampson Begay indicated that one ongoing problem is with chapters going directly to legislators with capital outlay requests with the knowledge or involvement of the CIO and outside the coordination policy adopted by the Navajo Nation. It was also observed that delinquent scopes of work delay projects and that there is no reason why scopes of work cannot be submitted at the same time as requests for capital outlay appropriations. Mr. House noted that another problem is that single capital outlay appropriations are often not sufficient to complete a project. The Navajo Nation is working to draft a model joint powers agreement that could be used to speed up the approval process. Mr. Naize requested an opportunity for representatives on the Navajo Nation to meet with legislators regarding the coordination of the application process.

Adjournment

There being no further business before the committee, the fourth meeting of the Indian Affairs Committee for the 2007 interim was adjourned at 2:05 p.m.